

OGC Has Reviewed

September 25, 1975

MEMORANDUM FOR: Director of Central Intelligence

RE: Possible Rules Violations by House Committee

The purpose of this memorandum is to consider whether the House Select Committee on Intelligence violated its own rules, House Resolution 591 (which created the committee), or any other rules of the House of Representatives by voting to publicly disclose classified information obtained from the CIA.

I. Select Committee Rules

The committee itself has promulgated the following rules with respect to disclosure of classified information:

"Rule 7. Protection of Papers and Documents

"7.1 All material and testimony received or obtained pursuant to House Resolution 591, 94th Congress, shall be deemed to have been received by the committee in executive session and shall be given appropriate safekeeping.

"7.2 The chairman in consultation with the ranking minority member of the committee shall, with the approval of the committee, establish such procedures as in his judgment may be necessary to prevent the unauthorized disclosure of all material and testimony received or obtained pursuant to House Resolution 591, 94th Congress. Such procedures shall, however, insure access to this information by any member of the committee under such procedures as may be established by the committee.

-2-

"7.3 Until such time as the committee has submitted its final report to the House, classified or other sensitive information in the committee records and files shall not be made available or disclosed to other than the committee membership and the committee staff, except as may be otherwise determined by the committee."

The most significant of these rules is 7.3. The language of this rule makes it clear that public disclosure of classified or other sensitive information is prohibited, except as may be otherwise determined by the committee. Clearly, rule 7.3 prohibits individual members of the committee from releasing classified information on their own impulse; however, the rule does not expressly prohibit public disclosure of information pursuant to a determination by the committee that such disclosure should be made. Indeed, the clear implication of the rule is that, when the committee determines that public disclosure is appropriate, such disclosure may be made. Consequently, since the public disclosure of September 11 was preceded by a committee vote explicitly authorizing such disclosure, rule 7.3 was not violated.

Neither were rules 7.1 or 7.2 violated by the committee's action of September 11. Rule 7.1 requires all documents obtained by the committee to be treated as though they were received in executive session. However, this, in itself,

-3-

does not bar disclosures that have been authorized by the committee. In this regard, it should be noted that no rule of the committee prohibits the public disclosure of documents merely because they are received in executive session. Similarly, neither House Resolution 591 nor any other rule or resolution of the House prohibits disclosure of documents received in executive session, when the committee which received the documents votes to make them public. Rule 7.2 merely requires the chairman and ranking minority member to take steps to prevent "unauthorized disclosure" of classified information. This rule would not apply to disclosures, like the one of September 11, which have been authorized by the committee.

In sum, it would be very difficult to argue that the committee's public disclosure of September 11 in any way violated the committee's own rules.

II. House Resolution 591

It would also be difficult to argue that the committee's action of September 11 violated House Resolution 591--the resolution which established the committee and set forth certain standards to govern its conduct.

Section 6(a) of the resolution deals with protecting the confidentiality of classified information. That

- 4 -

section provides:

"The select committee shall institute and carry out such rules and procedures as it may deem necessary to prevent (1) the disclosure, outside the select committee, of any information relating to the activities of the Central Intelligence Agency or any other department or agency of the Federal Government engaged in intelligence activities, obtained by the select committee during the course of its study and investigation, not authorized by the committee to be disclosed; and (2) the disclosure, outside the select committee, of any information which would adversely affect the intelligence activities of the Central Intelligence Agency in foreign countries or the intelligence activities in foreign countries of any other department or agency of the Federal Government."

There are several factors concerning this section which must be borne in mind:

First, the section does not expressly prohibit the committee from disclosing any specific information; its express command to the committee is to "institute and carry out" certain "rules and procedures." Thus, compliance with the command merely requires the committee to institute and carry out such rules as are described in the remainder of the section.

- 5 -

Second, the rules and procedures which are to be instituted and carried out by the committee are only those which "it," that is, the committee "may deem necessary." Thus, it is for the committee to determine which rules and procedures are necessary, and only such rules need be instituted and carried out. Presumably, if the committee deemed that no rules or procedures were necessary, it would not be required to institute any.

Third, and finally, the rules that the committee is commanded to institute and carry out are not all rules and procedures which it may deem necessary, but only those which it deems necessary to prevent disclosure of: (1) information whose disclosure is not authorized by the committee; or (2) information whose disclosure would "adversely affect" the intelligence activities of the CIA in foreign countries.

In short, section 6(a) commands the committee to: (1) institute and carry out rules and procedures, (2) which it deems necessary, (3) to prevent disclosure of information where disclosure is not authorized by the committee or information which would adversely affect the intelligence activities of the CIA in foreign countries.

With these three factors borne in mind, it appears that the committee has fully complied with section 6(a). First, the committee has instituted those rules and procedures which it deemed necessary to prevent disclosure

of all classified information, i.e., rules 7.1, 7.2 and 7.3 discussed above. Second, as shown in the previous section of this memorandum, the committee has carried out these rules and has not violated them.

It can be argued that section 6(a), if not explicitly, then at least by implication, contains certain prohibitions on what information the committee is at liberty to disclose. This argument would hold that, regardless of what rules it adopts, the committee is prohibited from releasing: (1) any information concerning the CIA, disclosure of which is not formally authorized by the committee; or (2) any information which would adversely affect the intelligence activities of the CIA in foreign countries.

Even if the validity of this argument is assumed, it still appears that the committee has fully complied with section 6(a). Certainly the committee did not violate the first of the two "prohibitions," since the disclosure of September 11 was formally authorized by the committee. Thus, the only issue is whether the action of September 11 violated the "prohibition" against disclosure of information which would adversely affect the intelligence activities of the CIA in foreign countries. The vote of the committee to make its September 11 disclosure, particularly in view of the debate which preceded the vote (which focussed on the precise question of potential effects of disclosure on foreign intelligence

activities), clearly reflects a judgment by the committee that disclosure of the material would not have adverse effects on foreign intelligence activities.

The only remaining question, then, is whether section 6(a) permits the committee to disclose information upon its own determination that it would not adversely effect foreign intelligence activities, or whether disclosure is prohibited until such a determination is made by some other party.

Considering the section as a whole, it appears that this determination was appropriately made by the committee.

First, section 6(a) specifies no other party who is to make such a determination; presumably, if the House, in adopting Resolution 591, had intended that some other party would determine which disclosures would adversely affect foreign intelligence activities, it would have specified who that party is. Second, as set forth above, Section 6(a) commands the committee to make the determination as to which rules and procedures are necessary to prevent disclosure of information which would adversely affect foreign intelligence activities. Implicit in this command is the authority to determine which disclosures would be harmful, because a determination of this kind is necessary to the task of determining the rules that are necessary to prevent such disclosures. Moreover, such an interpretation is entirely consistent with the Rules of the House of Representatives, which authorize all House committees to make determinations as to whether particular

disclosures would endanger any national security interests and, if so, whether to take precautions against such disclosures. For example, House Rule XI(g)(2) provides:

"Each hearing conducted by each committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a quorum present, determines by rollcall vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence or other matters to be considered would endanger the national security or would violate any law or rule of the House of Representatives..."

The significance of this rule is that it reflects the judgment of the House that its committees are appropriate vehicles to make determinations as to whether disclosure of particular information "would endanger the national security." This is precisely the kind of determination required by section 6(a) of House Resolution 591. Thus, Rule XI(g)(2) reinforces the implication in section 6(a) that the committee itself is to determine whether public disclosure of any particular information would adversely affect foreign intelligence activities. Since, as shown, the committee determined that the disclosure of September 11 would not have such adverse affects, that disclosure did not violate section 6(a).

III. Rules of the House

The House of Representatives, unlike the Senate, has no rule specifically governing the treatment of classified information. The only House rule that has any bearing on classified information is Rule XI(g)(2), discussed above.

As indicated, that rule authorizes committees of the House to make determinations as to whether "matters to be considered would endanger the national security," and if so, to consider those matters in executive session. The only limitation imposed by the rule is the requirement that such determinations be made by majority, rollcall vote with a quorum present.

In the present case, the committee made its decision to disclose the information in question by majority, rollcall vote with a quorum present. Thus, the committee's action was consistent with the only applicable House rule.

IV. Conclusion

From the foregoing analysis it is clear that the committee's public disclosure of September 11, though certainly an irresponsible act and an abuse of discretion, was not inconsistent with the committee's own rules, House Resolution 591, or the Rules of the House of Representatives. Consequently, it would be futile to argue that the committee should be denied further information on grounds that it violated any of these rules.

Special Counsel to the Director

25X1A

25X1A